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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,980	12/30/2005	Hiroshi Yoshii	283399US0PCT	3529
22850	7590	07/17/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER SULLIVAN, DANIELLE D	
			ART UNIT	PAPER NUMBER
			1616	
			NOTIFICATION DATE	DELIVERY MODE
			07/17/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/562,980	<b>Applicant(s)</b> YOSHII ET AL.	
	<b>Examiner</b> DANIELLE SULLIVAN	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 13-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/30/05, 07/06/2007, 12/06/2007 and 02/19/2008</u> .         | 6) <input type="checkbox"/> Other: _____                          |



## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group I, claims 1-12 in the reply filed on 04/21/2008 is acknowledged. Claims 1-22 are pending. Claims 1-12 are pending examination on the merits. Claims 13-22 are withdrawn from consideration as being drawn to non-elected inventions.

### ***Information Disclosure Statement***

The information disclosure statements filed 7/06/2007 and 2/19/2008 fail to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because contain documents published in Russian and Chinese. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "glycerin or its derivative" in reference to the alkoxyated glyceride recited in claim 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10 and 12 rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al. (US 5,411,932).

Yoshida et al. disclose a composition comprising Compound A (nicosulfuron); polyoxyethylene hydrogenated castor oil; polyoxyethylene nonylphenyl ether (alkoxyated glyceride), dialkylsulfosuccinate and polyglycerol esters of fatty acid (coadjuvants); bentonite-alkylamino complex (thickener-additive); and urea (nitrogen fertilizer). (Example 1; abstract; column 1, lines 8-14)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida et al. (US 5,411,932)

#### **Applicant's Invention**

Applicant claims a composition comprising a sulfonylurea and an alkoxyated glyceride. Regarding Claim 9 the composition further comprises one or more other herbicidal compounds. In Claim 11 the composition further comprises one or more herbicidal compounds and a coadjuvant.

#### **Determination of the scope and the content of the prior art**

##### **(MPEP 2141.01)**

Yoshida et al. teaches a composition comprising the sulfonylurea, nicosulfuron (compound A) and the alkoxyated glyceride, polyoxyethylene hydrogenated castor oil (surfactant) (column 3, lines 47-65. Yoshida et al. teaches that the compositions comprise at least one additional herbicidal component such as 2, 4-D and dicamba (column 2, lines 10-67).

#### **Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Yoshida et al. does not exemplify a composition comprising an alkoxylated glyceride; the sulfonylurea and one or more herbicidal compounds with or without a coadjuvant.

**Finding of prima facie obviousness**

**Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to further include one or more herbicidal compounds within the composition in view of Yoshida et al. One would have been motivated to include herbicidal compositions because Yoshida et al. teach a chemically stabilized suspension comprising Compound A, urea, a surfactant and at least one additional herbicidal component.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tadayuki et al. (US 5,668,086) teaches the use of chelating agents in herbicidal formulations enhance herbicidal effect.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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